FILE COPY

FILED
OCT 17 1958
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. 370.

SYLVIA SCHINDLER HOLLAND,
Petitioner,

vs.

NORMAN N. HOLLAND,
Respondent.

BRIEF OF RESPONDENT, NORMAN N. HOLLAND, IN OPPOSITION TO GRANTING OF PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF FLORIDA, AND APPENDIX.

WILLIAM GRESHAM WARD,
1240 duPont Building,
Miami, Florida,
Counsel for Respondent.

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City 6, Mo., HArrison 1-3030

TOPICAL INDEX

Analysis of Proceedings in State Courts of Florida 1

Entry of Final Opinion by Supreme Court of Florida on May 1, 1957, Rehearing Denied June 5, 1957 3

No Petition for Certiorari or Appeal Was Taken to Supreme Court of United States 3

Petition filed in Supreme Court February, 1958, Appealing to Discretionary Rights of Supreme Court of Florida to Permit Filing of Bill in Nature of Bill of Review 3

Response Filed by Norman N. Holland in Opposition to That Petition 4

Order of Supreme Court of Florida in Exercising Its Discretion Denying Permission to File New Suit 4

Denial of Petition for Rehearing in That Same Cause 4

Lack of Jurisdiction of This Court to Review Discretionary Order of Supreme Court of Florida 4-5

Marital Contract Is Not Within Purview of Federal Constitution 5-6

Prior Rulings of This Court in Case of Pawley v. Pawley Refusing to Entertain Jurisdiction over Divorce Proceedings in State Courts 7

Analysis of Opinions of State and Federal Courts Holding That Denial of a Petition to File a Bill in Nature of Bill of Review by Supreme Court of Florida or in Supreme Court of the State Is Not a Reviewable Order by This Court Since No Assignment of Error Can Be Based upon Refusal of a State Supreme Court to Exercise or Not Exercise Its Jurisdiction 7-9

Conclusion 9-10

Appendix—Motion to Dismiss and or Response to Petition for Leave to File Bill in Nature of Bill of Review A1

TABLE OF CASES

Cabell v. *Cabell's Adm'r*, (1858) 58 Ky. (1 Metc.) 319 6

Dartmouth College case, 4 Wheat. 518 5-6

Hagerott v. *Adams*, 8 Cir., 61 F. 2d 35, certiorari denied 288 U.S. 599, 53 S. Ct. 317, 77 L. Ed. 975, and 70 F. 2d 352 7-9

Hunt v. *Hunt*, (1879) 131 U.S. Append. clxv. 6

Livingston v. *Livingston*, (1903) 173 N.Y. 377, 66 N.E. 123, 93 Am. St. Rep. 600, 61 L.R.A. 800 6

Maynard v. *Hill*, (1888) 125 U.S. 190 6

Obear-Nester Glass Co. v. *Hartford Empire Co.*, 61 F. 2d 31 7

Pawley v. *Pawley*, certiorari denied 46 So. 2d 464, petition for rehearing denied 47 So. 2d 546, certiorari to Supreme Court of United States denied 71 S. Ct. 90, 340 U.S. 866, 95 L. Ed. 7

Rugh v. *Ottenheimer*, (1877) 6 Ore. 231, 25 Am. Rep. 513, 38 Pac. St. Rep. 231 6

Seven Up Co. v. *Cheer Up Sales Co.*, 153 F. 2d 231 (C.C.A. 8) 7

State v. *Tutty*, (1890) 41 Fed. 753, 7 L.R.A. 50 6

White v. *White*, (1849) 5 Barb. (N.Y.) 474, 4 Howard's Pract. 102 6

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. 370.

SYLVIA SCHINDLER HOLLAND,
Petitioner,

vs.

NORMAN N. HOLLAND,
Respondent.

BRIEF OF RESPONDENT, NORMAN N. HOLLAND, IN OPPOSITION TO GRANTING OF PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF FLORIDA, AND APPENDIX.

The petition for writ of certiorari sets forth a contention that there is a Federal question involved which this Court has the jurisdiction and power to review, by claiming that the Courts of Florida have deprived the petitioner of the benefit of Amendment XIV to the Constitution of the United States.

The bare facts of the case, as reflected by the record, may be summarized briefly as follows:

On the 24th day of May, 1954, Norman N. Holland filed a suit for divorce in the Circuit Court of Dade County, Florida, setting forth that he was a resident of the State of Florida, and that he had grounds for divorce under the laws of the State of Florida.

The defendant, Sylvia Schindler Holland, entered an appearance in the Circuit Court of Dade County, Florida, attempting to dismiss the case, raising the question of residence. The motion with reference to the sufficiency of the complaint as to residence was overruled by the Circuit Judge, but with leave to the wife, Sylvia Schindler Holland, to plead those matters in her answer to the complaint. In that answer she recited her claim that the Florida Court had no jurisdiction over her or over the subject matter, and then she denied each and every of the factual matters alleged by the plaintiff as grounds for divorce.

Among other defenses, she alleged factually that plaintiff in the court below had committed adultery. These facts appear in the appendix to the petition filed by petitioner.

After a long and arduous trial before a Special Master, the Master recommended that divorce be granted in favor of the plaintiff. Exceptions were filed to the Master's report, and the court below, to wit, the Circuit Judge, overruled those exceptions and entered a decree of divorce in favor of Norman N. Holland against Sylvia Schindler Holland.

Several collateral motions were then filed subsequent to the entry of the decree by Sylvia Schindler Holland, attacking the findings of fact and conclusions of law of the Master and the decree of the Court; and asking for a rehearing. The first Circuit Judge who entered the decree was the Honorable George E. Holt. On subsequent mo-

tions, one of the other Circuit Judges, the Honorable Marshall C. Wiseheart, heard the motions, and he also denied the petition for rehearing and other relief.

Sylvia Schindler Holland then appealed the decisions of the lower court to the Supreme Court of Florida, where the entire record, including all of the transcript of the testimony, was reviewed by the Supreme Court of Florida. The index to the transcript will disclose that from May 24, 1954 to January 28, 1955, there were continuous hearings. The transcript of the testimony was filed on May 5, 1955, as a part of the Master's report. The index to that testimony, which is set forth in the index to the transcript, will show that there were some 20 or 25 witnesses produced by the respective parties, and the entire record, including the Master's report, the testimony, the pleadings and the other proceedings created a record of approximately 2500 pages.

Final decree was entered on July 25, 1955, all as will be reflected by the index to the transcript and by the transcript in this cause filed in this Court.

On May 1, 1957, the Supreme Court of Florida entered its opinion affirming the lower court. Petition for rehearing was then filed on May 16, 1957, and on June 5, 1957, the Supreme Court of Florida entered its order denying the petition for rehearing.

No appeal was taken to this Court, nor was there any petition for certiorari filed, and the case was concluded, so far as the State of Florida was concerned and the Courts of Florida were concerned, on June 5, 1957, when the rehearing was denied.

On February 25, 1958, Sylvia Schindler Holland, through her counsel, filed a petition in the Supreme Court of the State of Florida, asking leave to file a bill of review, and attaching thereto a proposed bill of review.

The record sent to this Court failed to include or to disclose the fact that Norman N. Holland filed a motion to dismiss and or response to the petition for leave to file bill in nature of bill of review, and a true copy of this response is attached as a part of the appendix to this brief.

On April 1, 1958, the Supreme Court of Florida entered an order denying the petition for leave to file a bill of review.

Then counsel for Sylvia Schindler Holland filed a petition for rehearing from that order, and this was denied.

The point in controversy is whether the granting or denial of a divorce by the Courts of Florida presents any Federal question or Federal Constitutional question.

Under the full faith and credit clause of the United States Constitution, the action by the Supreme Court of Florida in affirming the decree of the lower court after a complete review of all the evidence, is final on the question of marital status, particularly so where it is admitted that both of the parties submitted themselves to the jurisdiction of the Florida Court and the case was tried upon the merits.

The petition for leave to file a bill of review, filed in the Supreme Court of Florida, as well as the petition for writ of certiorari in this case, claim that there was some concealed motive which influenced the judgment or action of the Special Master who heard the witnesses, or some concealed motive or hidden influence which influenced one of the Circuit Judges who entered the decree in the first instance. No claim is made that the Honorable Marshall C. Wiseheart, the second Judge, who denied the petition for hearing and other relief in the lower court, nor any member of the Supreme Court of Florida, was preju-

diced or that they failed to give due consideration to the record, or that they disposed of the appeal without a hearing, or that there was any corruption or fraud practiced by the Supreme Court of Florida.

After the Supreme Court of Florida on two occasions, namely, at the time of the hearing on the first appeal and then on petition for rehearing, reviewed the record and the testimony and entered its order affirming the lower court, that became the order of the Supreme Court of Florida, and it made no difference what Judge had entered the original decree in the lower court.

The Marital Contract Is Not Within the Purview of the Federal Constitution.

In a nebulous way, the petitioner suggests that she "has been deprived of her marital contract" by the due process of law accorded her by the Fifth and Fourteenth Amendments of the Constitution.

As the Fifth Amendment on its face restrains national action only—unless by the impact of the Fourteenth—it operates on state action also. Some difficulty is encountered in determining how the action of the Florida Courts offends it. Howbeit, the language of Chief Justice Marshall in the Dartmouth College case (4 Wheat. 518) would seem to settle it:

> "* * * The provision of the constitution never has been understood to embrace other contracts than those which respect property, or some object of value, and confer rights which may be asserted in a court of justice. It never has been understood to restrict the general right of the legislature to legislate on the subject of divorces. Those acts enable some tribunal, not to impair a marriage contract, but to liberate one of the parties because it has been broken by the other. When any state legislature shall pass an act annulling all

marriage contracts, or allowing either party to annul it without the consent of the other, it will be time enough to inquire whether such an act be constitutional."

See also *Maynard* v. *Hill*, (1888) 125 U.S. 190.
Hunt v. *Hunt*, (1879) 131 U.S. Append. clxv.

It has generally been considered by the courts of this country, Federal and State, that marriage, though in some respects a contract, is not within the constitutional interdiction of legislative acts impairing the obligation of contracts.

Cabell v. *Cabell's Adm'r*, (1858) 58 Ky. (1 Metc.) 319.

Livingston v. *Livingston*, (1903) 173 N.Y. 377, 66 N.E. 123, 93 Am. St. Rep. 600, 61 L.R.A. 800.

White v. *White*, (1849) 5 Barb. (N.Y.) 474, 4 Howard's Pract. 102.

Rugh v. *Ottenheimer*, (1877) 6 Ore. 231, 25 Am. Rep. 513, 38 Pac. St. Rep. 231.

State v. *Tutty*, (1890) 41 Fed. 753, 7 L.R.A. 50.

If Sylvia Schindler Holland had attempted to approach this Court by petition for certiorari within the statutory limit after the final opinion and judgment of the Supreme Court of Florida had been entered on June 5, 1957, then the petitioner would have been confronted with the question that the Supreme Court of Florida had failed to protect her constitutional rights or right in a contract, to wit: the marriage contract. And if she at that time had filed such a petition, she would have been met with the proposition, as above set forth, that the marital contract is not one which is guaranteed by the United States Constitution, and that the relationship under the marriage contract is not a Federal question nor protected by the Federal Constitution.

That was the ruling made by this Court, in effect, in the case of *Annie Hahr Pawley, Appellant*, v. *William D. Pawley, Respondent*, October Term, 1950, certiorari denied 46 So. 2d 464, petition for rehearing denied 47 So. 2d 546, certiorari to Supreme Court of United States denied 71 S. Ct. 90, 340 U.S. 866, 95 L. Ed.

However, the position of the said Sylvia Schindler Holland now does not even have that standing in this Court because it is the universal law of the land, including both the State and Federal decisions, that when a court of final resort has entered a final judgment or order or decree, and thereupon the decree or order is final, either by failure to appeal or by appeal and final action of the Appellate Court, that order cannot be set aside or ignored. If anyone has newly discovered evidence, then application must be made to the final court which had passed the final judgment by way of petition for leave to file a bill of review, or for leave to file a bill in the nature of a bill of review. These petitions are not granted as a matter of right but appeal only to the discretion of the final Appellate Court or the court of last resort.

In the case of *Seven Up Co.* v. *Cheer Up Sales Co.*, 153 F. 2d 231 (C.C.A. 8), that Court said, in announcing the general rule (see headnote 1):

> "The allowance by an appellate court of a petition for permission to file a bill of review in trial court rests in the sound judicial discretion of appellate court, and should be exercised cautiously and sparingly and only in cases where it is clearly demonstrated that the interests of justice will undoubtedly be served thereby."

In this case the Court referred to other cases as authority for its decision, to wit, *Obear-Nester Glass Co.* v. *Hartford Empire Co.*, 61 F. 2d 31; *Hagerott* v. *Adams*, 8 Cir.,

61 F. 2d 35, certiorari denied 288 U. S. 599, 53 S. Ct. 317, 77 L. Ed. 975, and *Hagerott* v. *Adams*, 8 Cir., 70 F. 2d 352.

In the last mentioned case, citing from 70 F. 2d 356, it appeared that the lower court which had been granted authority to consider the question of whether to grant leave to file a bill of review, had considered the claims of the petition and the affidavits, and had ordered that the motion for leave to file a bill of review be denied. An appeal was then taken from the District Court to the Circuit Court of Appeals for the 8th Circuit for the purpose of asking that Court to reverse its order, claiming that it was unsupported by the evidence or contrary to law, and there was an abuse of discretion. The Court said:

> "Proceedings to open up a judgment by bill of review on the ground of newly discovered evidence are analogous to motions for new trial on the same grounds. Such a proceeding is not founded in a matter of right, but rests in the sound discretion of the trial court. 'Matters resting in the discretion of a subordinate court cannot be assigned for error in an appellate court.' Steines v. Franklin County, 14 Wall. (81 U.S.) 15, 22, 20 L. Ed. 846. See, also, Thomas v. Brockenbrough (Harvie's Heirs), 10 Wheat. 146, 6 L. Ed. 287; Ricker v. Powell, 100 U.S. 104, 25 L. Ed. 527; Hopkins v. Hebard, 235 U.S. 287, 35 S. Ct. 26, 59 L. Ed. 232; National Brake Co. v. Christensen, 254 U.S. 425, 41 S. Ct. 154, 65 L. Ed. 341; Swft v. Parmenter, 22 F. 2d 142 (C.C.A. 8); Travelers' Ins. Co. v. Person, 58 F. 2d 210 (C.C.A. 8); Obear-Nester Glass Co. v. Hartford-Empire Co., 61 F. 2d 31 (C.C.A. 8). Where, as in this case, a long and costly litigation has been carried through to a final conclusion in the Circuit Court of Appeals, nothing could justify upsetting the solemn judgment of the court years afterwards and reopening the litigation short of the most positive, decisive, and convincing proof that injustice had been done, and that, in spite of due diligence of the losing party, the

court had been deceived in regard to the facts, and that new facts afterwards brought to light disclosed the injustice of the judgment. Not only did Judge Molyneaux find no such situation presented by the newly discovered testimony, but he found there was little therein to help the case of the losing party, and nothing to satisfy him that the newly discovered evidence would affect the result already reached in the litigation."

CONCLUSION.

We have carefully analyzed the supporting brief filed by the petitioner, and we cannot find any citation in her brief which supports the doctrine that the Supreme Court of the United States will review a discretionary order of the Supreme Court of a State of the Union where that court of last resort of the State has refused to exercise its discretion and to permit the filing of a bill in the nature of a bill of review. We have not been able to find any decision issued by this Court where this Court has ever entertained a petition for certiorari to review such a discretionary procedure.

As we pointed out in the preliminary part of this brief, the statutory period for any appeal or petition for writ of certiorari from the order of the Supreme Court of June, 1957, had long passed before this petition was filed in the Supreme Court of Florida in February, 1958.

We therefore respectfully submit that this petition for certiorari to this Court should be denied upon the following grounds:

1. That there is no Federal question involved.

2. That there is no Federal Constitutional question involved.

3. That statutory time in which an appeal could be taken from a decree or final judgment of a State Supreme Court has long since elapsed.

4. That the discretionary order of the Supreme Court of Florida in refusing to grant leave to file a bill in the nature of a bill of review, is not an appealable order to this or any other Court.

Respectfully submitted,

WILLIAM GRESHAM WARD,
1240 duPont Building,
Miami, Florida,
Counsel for Respondent.

October ..... , 1958.

IN THE SUPREME COURT OF FLORIDA.

SYLVIA SCHINDLER HOLLAND,
Petitioner,

v.

NORMAN N. HOLLAND,
Respondent.

MOTION TO DISMISS AND/OR RESPONSE TO PETITION FOR LEAVE TO FILE BILL IN NATURE OF BILL OF REVIEW.

Comes now NORMAN N. HOLLAND, the plaintiff below, the appellee herein and respondent to the petition, and for a motion to dismiss and response to the petition for leave to file a bill in the nature of a bill of review, says:

The allegations of the petition in relationship to the allegations of the attached proposed complaint do not show any ground or justification which would require or justify this Court in granting permission to file a bill in the nature of a bill of review in the Circuit Court of Dade County, Florida, in that—

(a) There has been no compliance with the requirements laid down by this Court in numerous decisions, for example—*Hall* v. *Hall*, 112 So. 622, 93 Fla. 809, Supreme Court of Florida, 1927. *Gamble* v. *Gamble Holding Corporation*, 162 So. 886; *City of Lakeland* v. *Chase National Co.*, 159 Fla. 783, 32 So. 2d 833; *DeMarigny* v. *DeMarigny*, 43 So. 2d 442; *Reed* v. *Reed*, 70 So. 2d 836.

Note: These cases will be discussed in the accompanying brief.

(b) The motion and attached complaint taken as a whole must be reviewed in the light of the entire record before the Court.

The following facts gleaned from the record we deem to be admitted:

1. The assignment of this case when it was originally filed in the Circuit Court of Dade County, Florida, was under the rotation doctrine to one of ten Judges. These assignments are made secretly by the Clerk's Office. The cause automatically by this assignment fell into the office of George E. Holt, Circuit Judge, and he at no time exercised any prerogative as the then Presiding Senior Judge to cause the case to be transferred to his Division. (See attached Certificate of Clerk of Circuit Court of Dade County, Florida, supporting this statement.)

2. When this case came at issue, the cause was first set for trial before the Court and then, upon joint consent of counsel, the Court was requested to appoint a Master. Counsel for the defendant, Sylvia Schindler Holland, consented subject to stipulations about payment by plaintiff of all Master's fees regardless of the outcome of the case. (See R. 1235; 2352-4; Appellee's Appendix now on file with this Court, 380, 381-2.)

3. The attorneys for plaintiff against whom collusion is now charged, who practiced law and had their offices at Miami Beach, requested the Court to appoint any competent attorney of the Court's choice who had his offices in Miami Beach for the convenience of the plaintiff and his witnesses most of whom resided at Miami Beach. Counsel for the then defendant, Sylvia Schindler Holland, Louis Bonsteel, whose offices were in the duPont Building, Miami, Florida, requested that for the convenience of the defendant and defendant's counsel, some lawyer

be named who had an office on the Miami side of Biscayne Bay. Defendant's counsel prevailed (see admissions in Reply Brief of Bonsteel, p. 2). Also attached affidavit of counsel.

To suit the convenience of defense counsel, attorney Honorable John W. Prunty, whose offices were in the duPont Building, Miami, Florida, was appointed, all of which was against the announced request of plaintiff's counsel and refutes any inference of any collusive attempt to have this cause referred to the Honorable George E. Holt, Circuit Judge, in the first place, or thereafter to have the said Judge refer this cause to the Honorable John W. Prunty as Master.

After the filing of the Master's report in this case (Appellant's Apdx. 30-60), numerous exceptions were filed by the defendant below, in which all issues concerning bias of the Master, the propriety of his conclusions of law or findings of fact, and the weight of the evidence were all raised (See Appellant's A. 61).

The final decree of divorce was entered on the 25th day of July, 1955 (Appellant's A. 85).

On September 13, 1955, defendant filed a motion to vacate the final decree (Appellant's A. 90), in which it was claimed that certain perjury had been committed by plaintiff, in that it was claimed that Mr. Holland had during the hearings before the Master made certain statements with reference to his proposed or claimed love affair with another woman sometime in January, 1955, and prior to the filing of the Master's report, which was filed on May 13, 1955, and notwithstanding that prior evidence, the plaintiff actually married a Mrs. Wartell on August 4, 1955, or approximately ten days after the final decree of divorce was entered (Appellant's A. 91). It was claimed (Appellant's Appendix 91):

"The defendant further shows that the testimony hereinabove referred to is false and was given for the purpose of perpetrating a fraud upon this Court and the defendant herein."

See, also, supporting affidavit of Louis S. Bonsteel, attorney for defendant, Appellant's A. 92-93.

This issue was then referred to the Honorable Marshall C. Wiseheart, who reviewed the final decree and the proceedings and the petition to vacate and set aside the final decree. That Judge, not Judge George E. Holt entered the order on the 16th day of September, 1955, denying said motion.

Note: The petition for leave to file bill in the nature of bill of review and the attached proposed complaint make no claim whatsoever that Judge Marshall C. Wisehart was biased or prejudiced in any manner.

The appeal was filed on September 25, 1955. An additional or new motion to reconsider Judge Wiseheart's order was filed by Defendant's counsel on October 13, 1955 (Appellant's A. 94) in which counsel, L. S. Bonsteel, among other things contended that Judge Marshall C. Wiseheart had acted in the absence of Judge Holt, and that he was not sufficiently familiar with the lengthy record, in which he contended that Judge Wiseheart was totally unfamiliar with the cause, the pleadings and the voluminous testimony, and the exhibits in evidence, and had wrongfully denied said Motion. He then requested Judge Holt to reverse Judge Wiseheart.

Another motion to vacate the final decree was filed on October 18, 1955, in which the question of the credibility of the plaintiff and the jurisdiction of the Florida Court was again raised, this being about three weeks after the notice of appeal had been filed, and these matters were then

heard before the Honorable George E. Holt on the 20th day of October, 1955, and said Court refused to disturb or vacate the order which had been entered by Marshall C. Wiseheart, and said Court denied both Motions above referred to.

Notice of Appeal is then shown, filed September 25, 1955. Assignments of Error were filed October 3, 1955, eleven in number (Appellant's A. 118-119).

Assignment of Error No. 7 (Appellant's A. 120) raised the question as to the payment of the Master's fee by the plaintiff for an undisclosed amount, and claimed that was contrary to Rule 10 (d) of the Rules of Practice of the Circuit Court for Dade County, Florida.

Assignment of Error No. 10 raised the question of the Court below refusing to amend or set aside the final decree. The same point had already been raised by exceptions to the Master's Report (Appellant's A. 82, Exception 49). The alleged bias of the Master was also raised by Exception 44, sub-paragraph 2 (Appellant's A. 79).

It appears from the record in this case that the two volumes of appellant's appendix to her brief consist of 367 pages. The first brief of appellant was 49 pages. The appendix to Appellee's brief, consisting of two volumes, consisted of a total of 414 pages.

Analysis of Contentions Made by Appellant in Her Original Brief in This Court.

Statement of Points Involved is set forth on page 4 of appellant's brief. Point I is as follows:

> "The plaintiff's adulterous relationship with Mrs. Wartell, whom he married immediately after the entry of his divorce decree, constitutes an absolute defense to this suit."

This point was argued beginning page 5, and the issue was thoroughly briefed and submitted to this Court. The entire record of over 2200 pages, together with some 88 exhibits, were forwarded in their original form to this Court.

Point 2 raised the question that the evidence was not sufficient to sustain the Master and the Lower Court in finding that the defendant was guilty of extreme cruelty and a violent and ungovernable temper, and this matter was thoroughly reviewed by this Court.

Point 3 raised the question of the weight of the evidence to establish plaintiff's domicile in Florida (Appellant's Br., 33).

Point 4 (Appellant's Br., 41) raised the question as to the action of the Court relative to certain discovery depositions, the imposition of certain of the fees against the defendant "and the ratification of the Master's acceptance of a fee in an undisclosed amount from the plaintiff, and the ratification of numerous palpable errors committed by the Master, clearly demonstrate bias of such a degree as to amount to a denial of a fair and impartial hearing".

Counsel for appellant (Br., 47) again argued that the Master's acceptance of a fee in an undisclosed amount violated Rule 10 (d) of the Rules of Practice of the Circuit Court of Dade County, Florida.

These issues were all taken up separately and answered in great detail by appellee's counsel.

A reply brief was then filed by appellant's counsel in which counsel again contended that there was bias. On page 2 counsel contended:

"It was *not* stipulated that John W. Prunty be the Master; on the contrary, when defense counsel in-

quired on this point, Judge Holt merely replied 'It would be someone on this side of the Bay' ".

As shown by affidavits hereto attached, this was in denial of the request made by plaintiff's counsel that the Master be someone in Miami Beach.

Then counsel for appellant in the reply brief complains of the attack made by appellee's counsel on the various motions for vacating the decree, two of which were heard by Judge Holt and one by Judge Wiseheart.

Note: This Court will note from its own records that appellee's motion to strike those subsequent proceedings was granted so the propriety of those motions and all other factors involved therein were passed upon directly by this Court in granting the motion to strike.

On page 5 of appellant's reply brief, counsel for appellant charges several acts showing bias on the part of the Master, and this attack continues for several pages thereafter.

These claims of bias were covered in approximately 10 pages in specific detail, all of which would of necessity have been considered by this Court; but those exceptions, objections and claims about the bias of the Master are pinpointed only on the fact that in considering the weight of the testimony as a whole, he found for the plaintiff below and not for the defendant.

On page 28 of appellant's reply brief, counsel for appellant again argues (Exception 49) with reference to the Master's failure to state the amount of fee which was paid to him. This was in answer to appellee's brief, p. 52. The amount of that fee in the total of $3,500—$500.00 paid on January 26, 1955, and $3,000 paid on March 24, 1955, long before the Master's Report was filed, was fully disclosed.

Counsel for appellant in the reply brief makes no claim that the fee was excessive. The Special Master's Report (Appellant's A. 60-61) showed the certification by the Special Master that he devoted over 80 hours to the taking of testimony, and approximately 125 hours to review of the evidence and proofs, the study and inspection of appropriate authorities and the preparation of the Special Master's Report.

Then the Master certified that the fees of the Special Master for his services in this case have been paid by the plaintiff and receipt of the same "is hereby acknowledged".

This was filed on the 5th day of May, 1955, and there is no showing that any effort was made by defendant's counsel to inquire of the Court or of the Master as to the amount of those fees. No objection was made as to the certification by the Master of the great number of hours and days spent in the case, and no claim was made that the Master or counsel for the plaintiff ever concealed the amount of the fee or were ever asked as to the amount of the fee. This Court had before it the amount and the undisputed and undenied certification of the Master of the time spent, and the entire record, which, including exhibits, consisted of approximately 2,500 typewritten pages.

This Court granted oral argument, and the records will show that additional time of approximately one hour to a side was allowed each counsel. This Court, then consisting of the Division of Chief Justice Terrell, Justices Roberts and O'Connell and Associate Justice Welch, rendered its opinion on May 1, 1957, affirming the Lower Court without opinion.

The records in this Court will show that a petition for rehearing was prepared jointly by Smathers, Thompson &

Dyer of Miami, Florida (who were counsel for the defendant below), and J. Lewis Hall of Tallahassee, Florida, who had entered his appearance after the briefs were filed, but who was present at the oral argument before the Court.

In this petition for rehearing, the same counsel who now raise this same point again in the petition for leave to file a bill in the nature of bill for review, complained of the Special Master receiving an undisclosed amount of money, and claimed it was a violation of Rule 10 (d) of the Rules of the Circuit Court of the 11th Judicial Circuit, and claimed that such a procedure

> "and that the approval and affirmance by this Court of such procedure and the decree resulting therefrom deprives the appellant defendant of a fair trial contemplated under our fundamental law." (P. 2).

Point 2 in the petition for rehearing raised the question of the weight of the evidence on the question of adultery.

Point 3 claimed that this Court had "apparently overlooked and failed to consider in evaluating the evidence and testimony as to residence", certain factors.

Point 4 in the petition for rehearing charges that this Court

> "apparently overlooked and failed to consider that the uncontradicted and undenied documentary evidence establishes beyond a doubt that the appellee plaintiff indulged in lewd * * * language"

and that plaintiff

> "is therefore estopped to assert any such language or dialogue on the part of the defendant wife as grounds for divorce."

Point 6 charged this Court with overlooking the effect of the entire evidence as a whole, as follows:

> "As a result of the complete misconception of the evidence and the legal effect thereof by the Master and the Circuit Judge as aforesaid, the Court failed to correctly apply the law as to what constitutes proof of adultery and completely ignored the overwhelming proof of adultery contained in the admissions of appellee plaintiff in regard to his relations with Judy Wartel."

Ground No. 8 of the petition for rehearing charged this Court with this error:

> "The Court has apparently overlooked and failed to consider the fact that the record demonstrates bias on the part of the Special Master in favor of the appellee plaintiff."

Ground 9 of the petition for rehearing contended that this Court had erred in that

> "The Court has apparently overlooked and failed to consider the fact that the record demonstrates bias on the part of the Chancellor in favor of the plaintiff appellant."

Ground 10 of the petition for rehearing accuses this Court of error, as follows:

> "The Court apparently overlooked and failed to consider that the entire record in this cause:
>
> (a) Bespeaks a lack of jurisdiction because appellee plaintiff was not and is not a bona fide domiciliary of the State of Florida;
>
> (b) That there has been a denial to appellant defendant of:
>
> (1) Due process of law; and
>
> (2) Equal protection of the laws."

With this rather critical, and to some degree contemptuous petition for rehearing, this Court gave due consideration and on October 16, 1956, denied the petition for rehearing.

Relationship and Relevancy of the Petition for Leave to File a Bill in the Nature of a Bill of Review, When Considered in the Light of the Admitted Record Above Analyzed and Other Undisputed Facts.

The supporting brief filed by J. Lewis Hall of Hall, Hartwell & Douglass, contains his analysis of the new matters which are supposed to appeal to this Court so that this Court would exercise its discretion and permit the filing of a bill in the nature of a bill of review, and we take that analysis as the ultimate of what could possibly be contended, wherein it is claimed (Br., 2):

> "Subsequent to the entry of said final decree and subsequent to the affirmance thereof by this Court, certain facts unknown to the plaintiff at the time of the entry of said final decree and affirmance thereof by this Court became known to petitioner and which facts could not have become known to the petitioner by the exercise of reasonable diligence, certain of said facts being as follows:"

Then he outlines under paragraph (a) the charges made in the proposed complaint that George E. H. , who entered the final decree in the cause aforesaid, and Morton Rothenberg and Jack D. Burris, attorneys for Norman N. Holland, enjoyed a close personal relationship.

(b) That John W. Prunty, the Special Master in said cause, was at that time a general partner of Thurman A. Whiteside, and that at the time Thurman A. Whiteside had had financial transactions with Judge Holt where

Judge Holt made an alleged profit of approximately $3,900 on a $450.00 investment.

(c) That Judge George E. Holt and John Prunty, Master, had been close personal friends for upwards of twenty-five years.

These are the only charges which are claimed to be newly discovered evidence showing bias or prejudice which it might be contended were never considered or reviewed in the lengthy proceedings before the Master, the Lower Court and before this Court on the first appeal, and again on petition for rehearing.

There are other charges made in the brief (p. 3), and we brief the statements:

Judge George E. Holt and John Prunty did not recognize the Canons of Ethics adopted by the Supreme Court to be the law of the State of Florida.

Note: All issues relative to the Master's Report and the so-called undisclosed fee were thoroughly discussed, shown in the record and made a part of the briefs and petitions for rehearing before the Supreme Court.

Then Mr. Hall contends (Br., 3-4) that there were other facts which were known to the plaintiff (and we assume he means the defendant below, the Wife) prior to the entry of the final decree complained of

> "but the relationship of said known facts to the above enumerated unknown facts were not apparent to the plaintiff and only after discovery of the above mentioned facts did plaintiff fully appreciate the significance of the following matters".

Then he enumerates under (a) the violation of rule 10-D of the Circuit Court of Dade County with reference to Master's fees, all of which was thoroughly passed upon

by this Court; (b) the issue as to whether the intentions of the plaintiff below with reference to the so-called love affair with Judith H. Wartell were fully considered. This point was covered and brought to the attention of the Court by the exceptions and by the motions made after the final decree and thoroughly discussed in all of the briefs and in the petition for rehearing before this Court.

It is contended that this was some evidence of perjury of the witness below, but, as has been established by this Court in many decisions referred to in our accompanying brief, even if there was perjury, which we do not admit, the evidence cannot be reviewed on a bill in the nature of a bill of review.

The fact that Norman N. Holland and Judith H. Wartell were married on August 4, 1955, after the entry of the final decree in this cause, was thoroughly elaborated on in the briefs and in the record, and that issue is foreclosed by the Court in the decisions on the appeal.

(c) It is charged that John Prunty, as Special Master, ignored the manifest weight of some 46 items of documentary evidence (Br. 5). That point was all foreclosed by the appeal.

(d) That John Prunty as Special Master in the case of Holland v. Holland below, ignored certain testimony or failed to give proper weight, all of which factors were pointed out in the exceptions to the Master's report and the assignments of error and in the respective briefs, and all disclosed by the evidence in the various appendices and in the entire record of the testimony before this Court (Br. 5-6).

Reference to the petition itself and its relationship to the proposed bill of complaint in the nature of bill of re-

view fails to allege that there has been any newly discovered evidence, the consideration of which if it had been known to the Court below, would have brought about another result.

No claim is made of prejudice or bias of the Master in this case other than the fact that the Master was a general law partner of Thurman A. Whiteside, and Thurman A. Whiteside had had one business transaction with Judge George E. Holt.

The petition and the proposed complaint do not charge that there was any collusion between the attorneys for the plaintiff to have this cause referred to the Honorable George E. Holt, one of the ten Circuit Judges, or that they were guilty of any collusion or efforts to have John W. Prunty appointed as a Special Master. The record, as above referred to, reflects that just to the contrary was the truth.

Reference to the proposed complaint itself which is made a part of the petition by reference, reflects nothing but a rehash of the matters which were definitely concluded by the proceedings in the court below.

Pages 1, 2, 3, 4, 5, 6, 7, up to paragraph 4 on page 8, are simple re-allegations of the same matter covered in the original answer which was filed by the wife in the Lower Court and passed on by this Court on the appeal.

Plaintiff then contends on page 8, paragraph 4 of the proposed complaint that certain matters and things transpired and existed during the period of the litigation in the Lower Court, which matters and things were then unknown to plaintiff (meaning the defendant in the case below).

Then, in the attempt to enumerate what those facts are, paragraph 5 of the proposed complaint is a complete

re-statement of the same things which have been previously passed upon in this Court, and is simply a repetition of the record and proceedings taken in that case.

Paragraph (a), page 10, reiterates paragraph (a) which is referred to in the petition and in the brief by counsel, which, briefly stated, contends that Morton Rothenberg and Jack D. Burris enjoyed a close personal relationship with Judge Holt.

(b) That at the time John Prunty was appointed Special Master, Judge Holt was involved in a financial transaction with Thurman A. Whiteside, his law partner, involving some airplane cylinders, but no charge is made that this was reflected in any way by the action of John W. Prunty who passed upon admittedly disputed evidence.

Paragraph (c) (p. 13), simply charged, as above stated, that John Prunty and Judge Holt were personal friends, but it is not alleged wherein that had any bearing upon the factual situation in this case, particularly where the entire record was thoroughly reviewed by this Court not only on the appendices, but under the original record.

Paragraph (d) (p. 13) is simply reiteration with reference to the payment of a Master's fee in an undisclosed amount, all of which was reflected and passed on in the Lower Court and in the Supreme Court in the former proceeding.

There is no charge in the complaint as proposed that the fee was exorbitant or that counsel for defendant in the court below ever made any objection to the certification of the Master as to the number of hours and days spent, or ever asked for information concerning the amount of the fee, or that such information was ever withheld upon request being made therefor.

Paragraph 6 (p. 16) of the proposed bill, without the statement of any other facts, circumstances or charges:

> "Plaintiff alleges that the matters and things set forth and alleged in the preceding paragraphs which were unknown to her at the time of the said former divorce proceedings and which could not have been known through the exercise of reasonable diligence, now clearly demonstrate the venality, bias and prejudice of the said Judge Holt, as the presiding Judge, and of the said John Prunty, as Special Master appointed by the said Judge Holt, in said former proceedings, * * * at the instance and instigation and as a direct result of the corrupt, debauching and unethical practices in and relating to the said former divorce proceeding on the part of the said George E. Holt, as Judge and his appointee, the said John Prunty as Special Master in said former proceeding, * * * and did deprive the plaintiff herein of a fair and impartial trial and which resulted in the venal, biased and prejudiced report filed by the Special Master with the said Judge Holt in the said former proceedings in favor of the defendant herein, and the venal, biased and prejudicial ratification of the said Master's report."

It was charged in the balance of said paragraph that these uncorroborated facts deprived her of due process of law and that because of those unstated facts, but simply upon inference, the present plaintiff of the proposed suit was denied an opportunity to take appropriate legal proceedings to effect the disqualification and remove the said Judge Holt as the presiding Judge and the said John Prunty as Special Master.

No charge is made that Judge Marshall C. Wiseheart who denied a motion to amend the final decree, nor any member of this Court who were thoroughly familiar with each and every of the factual matters in the said case, were

biased or prejudiced. Judge Wiseheart and this Court, sitting as the Reviewing Court, had this same opportunity to evaluate the testimony as did the Chancellor in this case. See *Thomas* v. *Thomas*, 96 So. 2d 771, 773, 774.

Under these circumstances, the ruling of the Supreme Court of Florida as to the weight of the evidence and the circumstances in the case, particularly where the decrees of the Lower Court were affirmed without opinion, becomes the judgment of the Supreme Court of Florida. See *State of Florida ex rel. Mortgage Investment Foundation* v. *James R. Knott*, 97 So. 2d 265, all of which said cases are referred to and analyzed in the supporting brief.

This respondent respectfully shows that such charges are impertinent and are scandalous and are contemptuous with reference to the findings by this Court on appeal, and should be stricken or the motion or petition denied.

The respondent, further answering the petition for leave to file a bill in the nature of review and further answering the allegations of the complaint, proposed copy of which is attached to the petition and made a part thereof, affirmatively says that he has no personal knowledge of any of the relationships, if any, between the Honorable George E. Holt or John W. Prunty or Thurman A. Whiteside. At the time of the institution of this suit in the Lower Court this respondent was not acquainted with John W. Prunty, was not acquainted with Honorable George E. Holt, Circuit Judge, or with Thurman A. Whiteside. The only time this respondent was ever in the presence of the Honorable George E. Holt was at a preliminary hearing at the time application for temporary suit money and attorneys' fees was asked for, in the presence of counsel for both sides.

Respondent denies the allegations of any improper bias or prejudice on the part of the said Master or the

Honorable George E. Holt, and denies each and every allegation of the complaint and the motion or petition for review relative thereto.

This defendant denies ever making any statements to his former wife that this case was fixed or that he had any knowledge or even intimation that anyone claimed that there was any impropriety in any respect.

This respondent further says that he was personally in the presence of the Master at the time certain motions were made at the conclusion of the hearings before the Master as reflected Tr. 2352-4 (Appellee's Appendix 380A-381-382). For the convenience of the Court, these excerpts are as follows (Appellee's A. 380A):

> "Mr. Bonsteel: * * * It was at the request of counsel for the plaintiff in open court—Mr. Burris was not there, so he may not know this—that the case be referred to a Master, and counsel for the defendant agreed on the condition that the plaintiff pay the Master's fee and the costs of the reporting."

Then, as reflected Appellee's A. 381, this statement was made by the Master in the presence of the attorneys and this respondent and other parties:

> "The Master: I also regret the length of the record. I feel I have done what I could to try to keep it down. I should like to say this to counsel. I hope that I have not seemed to be too short-tempered or impatient in this case. It has been a concern of mine to try to get this matter to a conclusion and I should like to inquire of counsel now—I know that you do not agree with a good number of my rulings on the matter of the admission and exclusion of evidence and certainly you have that right to disagree—if there is any general objection to this case having been referred to a Master, to this Master in particular, and to a Master as such.
>
> "

Mr. Burris: We have a stipulation in this record referring this cause to you. Is that not right, Mr. Wallner?

Mr. Wallner: We have that stipulation and we have acquired no objection since that time, Your Honor.

Mr. Bonsteel: We have nothing to register an objection to, Your Honor. On the contrary, I know that this has been prolonged and I want to thank you for your consideration."

(This statement was made February 15, 1955, at the conclusion of the hearings before the Master.)

This respondent, further answering, shows unto the Court that he did marry Judith Wartell on August 4, 1955, about ten days after the signing of the decree of divorce. Respondent further shows unto the Court that he is now married to the said Judith Wartell; that they have lived in Dade County, Florida, as citizens of Dade County, Florida, ever since. Respondent states that he was a *bona fide* citizen of Dade County, Florida, prior to the institution of the suit filed in this case for over a period of 90 days, and that he had come to Florida with the intent of making this State his permanent place of abode and residence and became a citizen hereof. Respondent states that as soon as his qualifications permitted, he registered as a voter on February 7, 1955, and has since voted in the elections. He has filed his income tax returns with the Director of Internal Revenue at Jacksonville, Florida; that he has been permanently employed in the City of Miami, Dade County, Florida, continuously since February of 1954, has maintained his residence under yearly leases at all times since his arrival in the State of Florida, is active in numerous civic and charitable organizations in Dade County, Florida, and denies that he has ever made any statements to his former wife or to anyone intimating that he had

planned to return to the State of New York after his divorce proceedings were concluded, whether favorable or unfavorable to him.

Respondent has filed his application with the Real Estate Commission of the State of Florida for a license as a real estate salesman. Permission has been granted for respondent to take the examination therefor, and respondent is now studying in preparation for the taking of such examination. Before said permission to take the examination, respondent had to qualify as a permanent resident of this State for a sufficient time.

Wherefore, respondent by way of summary says:

1. From the admitted record in this case, as this respondent has attempted to point out in detail hereinabove, it specifically appears that each and every of the fundamental or substantial matters now sought to be relitigated, have already been passed upon by this Court.

2. There has not been any allegation or claim by the plaintiff and the petitioner in this proceeding that she could bring in new evidence, or that there is any new evidence or new witnesses.

3. There has been no showing or even claim that there were any matters at any time in existence which would have been the basis of any statutory or fundamental disqualification of either the Master or the Judge in the Lower Court or any members of this Court.

4. It is not alleged that any purported or claimed bias, which claims were made in the proceedings in the Court below and reviewed by this Court, were based upon any pecuniary interest by the said Master on the outcome of the case one way or another.

5. There are no facts now alleged or any evidence alleged which petitioner claims could be presented to this Court or to the Lower Court to substantiate any claim of bias or prejudice either under grounds of disqualification or any other grounds.

6. It specifically appears that the Honorable George E. Holt as the Chancellor did not interview any of the witnesses and did not have any of the testimony on the merits of the case before him except in the same transcript form of question and answer as was presented verbatim to the Supreme Court of Florida; that his decision was based upon the transcript of the record and the exhibits the same as presented to this Court.

7. The analysis of the original record in connection with the petition for leave to file bill in the nature of bill of review and the proposed new complaint make no factual allegations that the Master, John W. Prunty, was influenced or coerced or acted in any arbitrary manner or fashion during the taking of the testimony, and that taken at its full import, there is simply the sworn complaint by the former wife, unsupported by any other affidavits or suggested testimony or facts, that in her opinion John W. Prunty was prejudiced and should have been disqualified simply because he was—

(a) a partner of Thurman A. Whiteside, who was alleged to have had a business transaction with the Honorable George E. Holt, or

(b) that he was a personal friend of George E. Holt.

There is no allegation or complaint that the attorneys for the plaintiff in the Court below were personal friends or had any social relationship or were mutually under obligation of any kind or manner whatsoever with the Master, John W. Prunty, or that the said attorneys for

the plaintiff made any effort in the first place to have the said Prunty, or any other particular Master, appointed as Master or exercised any influence over the said Master after he was appointed.

WARD & WARD,
1240 duPont Building,
Miami, Florida.
By W. G. Ward,
Attorneys for Respondent.
Norman N. Holland.

I hereby certify that copy of the foregoing response, together with copy of the affidavits of Norman N. Holland and Stanley Joel Levine, were this 20th day of March, 1958, mailed to the attorneys for petitioner, Messrs. Hall, Hartwell & Douglass, Professional Bldg., Tallahassee, Florida.

W. G. Ward.

State of Florida, County of Dade, ss.

Before Me, the undersigned authority, an officer duly authorized to take acknowledgments and administer oaths, personally appeared before me this day Norman N. Holland, who after being by me duly sworn, deposes and says:

I am the respondent in this proceeding, and I was the original plaintiff in the case of Holland v. Holland filed in the Circuit Court of Dade County, Florida, in which a decree of divorce was entered on July 25, 1955. I have read the above and foregoing motion and response to the petition for leave to file an extraordinary petition in the nature of bill of review, and the factual matters alleged and set forth therein are true. I have no personal knowledge of the legal conclusions as to the state of record other than as have been reflected in this response.

Norman N. Holland.

Sworn to and subscribed before me this 20th day of March, A.D. 1958.

Notary Public, State of Florida.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA, IN CHANCERY

No. 169,465

NORMAN N. HOLLAND, Plaintiff,

vs.

SYLVIA SCHINDLER HOLLAND, Defendant.

CERTIFICATE OF CLERK.

I hereby certify that on the 24th day of May, 1954, a complaint for divorce was filed in this Court wherein the plaintiff was Norman N. Holland and the defendant was Sy via Schindler Holland; that under the rules and regulations governing the Clerk's Office of the Circuit Court of Dade County, Florida, all cases filed other than emergency docket cases, are subject to what is called a blind assignment system, wherein the Clerk's Office makes assignment of all new cases to one of the then ten Judges of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, in rotation according to formulas which have been adopted by the Clerk's Office. No attorney or court performs any function in the assignment of these cases.

This case was, in accordance with the standard practice, assigned to Division A of the Court, which at that

time was occupied by the Honorable George E. Holt, Circuit Judge.

No person or Judge had prior knowledge of the Division to which this case was automatically assigned prior to the assignment thereof.

In witness of this certification, I have hereunto set my hand and seal this, the 20th day of March, 1958.

E. B. Leatherman,

Clerk of the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida,

By

Deputy Clerk.

IN THE SUPREME COURT OF FLORIDA

SYLVIA SCHINDLER HOLLAND, Petitioner,

vs.

NORMAN N. HOLLAND, Respondent.

AFFIDAVIT OF STANLEY JOEL LEVINE.

State of Florida, County of Dade, ss.

Before me, the undersigned authority, an officer duly authorized to take acknowledgments and administer oaths, personally appeared before me this day Stanley Joel Levine, who after being by me duly sworn, deposes and says;

I am a practicing attorney and member of the Dade County and Florida Bar, with offices at 420 Lincoln Road, Miami Beach, Florida.

I was practicing law on May 24, 19[illegible] and was one of the counsel of record on behalf of the [illegible]ntiff, Norman N.

Holland, and as such participated in the preparation and filing of the complaint for divorce in case number 169,465, Chancery, lately pending in the Circuit Court of Dade County, Florida.

I had been personally acquainted with Norman N. Holland for approximately thirty years and had handled certain legal transactions for him in the early part of 1954 when he was a resident of Dade County, Florida, consisting of his sale of his interest in businesses in which he had been formerly engaged in the State of New York. Those preliminary arrangements for the sale of that business had been carried on for some time prior to my participation in the case, and my participation was solely in the consummation of that transaction.

As reflected in the previous record in this case, the purpose of that sale was for the assignment of the proceeds thereof *in toto* for the support of the children of his then wife, said parties having separated some time prior thereto, on or about October 31, 1953, all as reflected in the transcript of the record.

I had been first employed and subsequently became a partner of Jack D. Burris in the years 1950 and 1951. During that period I became familiar with Mr. Burris' trial experience. I have a 30% hearing deficiency and do not engage in any trial work except in minor matters, otherwise associating other counsel. I have made a practice of calling upon Mr. Burris or other members of the Bar to handle trial matters in which my office is retained.

While Mr. Holland was residing here, he became aware of the fact that his former wife, the petitioner herein, had instituted a separate maintenance action in the Supreme Court of the State of New York against him. Mr. Holland thereupon consulted with me and I called upon Mr. Burris

as a consultant. Mr. Holland advised Mr. Burris and me that he desired to institute a divorce proceeding in the State of Florida, and that he would not submit to the jurisdiction of the New York Court because he was not a resident of that State.

Mr. Burris advised me that he was in the process of transferring his office from his former association with Jack A. Abbott to a new association with the Honorable Morton Rothenberg.

Mr. Burris advised me to file the complaint for divorce in my name alone. He further stated that if the complaint resulted in a default, his services would then not be needed, but that if the matter became contested he would be glad to become associated with me and handle the trial proceedings. The association was arranged with Mr. Burris prior to his association with Morton Rothenberg.

The complaint was filed by me on May 24, 1954. Thereafter petitioner herein filed an appearance through counsel, and it thereupon became a litigated matter. Accordingly I communicated with Mr. Burris and arranged for his new firm to participate in the case as associate counsel, all in accordance with the previous agreement and understanding.

I had never had contact of any kind whatsoever with either the Honorable George E. Holt, Circuit Judge, or the Honorable John Prunty, Master, except for court appearances in open court before Judge Holt, and my attendance during the hearings in the Holland case before John Prunty.

In November of 1955, the question came up of the hearing of the testimony before the Court personally, or

whether the matter should be referred to a Master for the convenience of both parties. I appeared before the Honorable George E. Holt with Mr. Louis Bonsteel, attorney for the then defendant. I stated to the Court that Mr. Holland and some of his witnesses resided in Miami Beach, and suggested that a Special Master be appointed from among the Bar of Miami Beach, Florida. Mr. Bonsteel objected to any Miami Beach lawyer, and requested for his convenience that a lawyer "on this side of the Bay" be appointed. Judge Holt ruled that he would appoint a Special Master with offices in Miami, in compliance with the request of Mr. Bonsteel.

Several days thereafter and as of November 29, 1954, an order of reference was entered appointing the said John W. Prunty having his office in the same office building in Miami, Florida, as attorney Bonsteel, as Special Master, to which neither side then or thereafter objected.

Certain matters have been charged against me in paragraph 11 of petitioner's complaint attached to the petition which is before this Court. In response thereto I state:

"I deny that I at any time ever stated to any person, either directly, in substance or by inference, that I subscribe to the belief that, in the practice of the law, "it was ethical and proper for an attorney at law to offer to pay or to arrange for his client to offer and to pay a bribe to people in public office if the purpose of the bribe was to secure rights to which the client believed he was entitled."

Such statement has never previously been attributed to me by petitioner or her attorneys in any previous paper filed in the divorce case, despite the fact that the conference referred to in which the said statement is alleged to have been made was the subject of three separate affidavits

by Louis Bonsteel, former counsel for petitioner. I state that said charge is false.

I deny that at said conference I stated that petitioner herein did not have a chance to prevail in the action, regardless of the proof that might be adduced in her favor. Such statement could not have been made by me by reason of the fact that the alleged conference took place (as conceded by petitioner) on October 4, 1955, which was after the final decree had been entered on July 25, 1955.

I deny that I stated that it was a matter of common knowledge that Judge Holt spends more than three times his visible income and that I knew where Judge Holt obtained extra funds for his living expenses, or that I stated that Judge Holt was owned by three men from Miami Beach and that I well knew the three men and how to reach them.

This statement has never been attributed to me in any document heretofore filed in the divorce case by petitioner's counsel, despite the fact that affidavits have been filed by said counsel purportedly summarizing what was said at said conference of October 4, 1955 (See Appellee's A. 380-A).

I deny that at said conference, or at any other time, I ever stated that I could tell a very interesting story about the Honorable John Prunty and that, at the conclusion of the divorce action, I would relate said interesting story about the Honorable John Prunty.

I further state with reference to the foregoing that after the Master's hearings had been concluded, Burris, L. S. Bonsteel and I met in Walgreen's Drug Store in Miami, Florida, and sat at the same table. During the conversation Mr. Burris, in a jocular manner, stated to Mr. Bonsteel that

it appeared that the New York attorney, Jerome Wallner, had taken over control of the trial and was directing Mr. Bonsteel's every move. Mr. Bonsteel responded that he was having a lot of trouble with Mr. Wallner and his New York employer, Mr. Louis Nizer, and Mr. Bonsteel then stated to me and Mr. Burris: "After this case is over, I will tell you an interesting story about the Nizer Office and Mr. Wallner and my relation with them in this case."

I deny that I offered a settlement to petitioner because respondent, Norman N. Holland, wanted to return to New York where he could earn two or three times his Florida earnings. This matter was previously raised in a former affidavit filed by Mr. Bonsteel, referring to the conference of October 4, 1955. It was answered by me in an affidavit filed October 19, 1955, which is part of the record before this Court and appears Tr. 2532-6 (Appellee's A. 394). This affidavit was considered by this Court in its final determination of the cause on appeal.

I deny that I stated that I knew of a telephone call alleged to have been made by Norman N. Holland to petitioner herein, in which Mr. Holland is alleged to have informed petitioner herein that the case had been fixed and that the Master had ruled in his favor. The telephone call from Mr. Holland is claimed in the proposed complaint to have taken place before the Master's report was filed, namely, before May 24, 1955.

I know of no such telephone call and have never made any statement that I did know of such call.

I state that the analysis of the pleadings and record reviewed by this Court and the numerous affidavits filed by Mr. Bonsteel are all a matter of record in this Court, and that no such claims have ever been heretofore made.

Sworn to and subscribed before me this 20th day of March, 1958.

.....,
Notary Public, State of Florida.